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**2 UNITED STATES BANKRUPTCY COURT**

**3 SOUTHERN DISTRICT OF NEW YORK**

4 Case No. 08-13555 (JMP)

6

7 | In the Matter of:

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**LEHMAN BROTHERS HOLDINGS INC., et al.**

10

## 11 | Debtors.

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15 | United States Bankruptcy Court

16 | One Bowling Green

17 | New York, New York

18

19 August 9, 2011

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22 B E F O R E :

23 HON. JAMES M. PECK

24 U. S. BANKRUPTCY JUDGE

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2 UNCONTESTED MATTER re Amended Motion for Approval of Procedures  
3 for Determining the Allowed Amount of Claims filed Based on  
4 Structured Securities Issued or Guaranteed by Lehman Brothers  
5 Holdings Inc.

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Be seated, please. Mr.  
3 Perez?

4 MR. PEREZ: Good morning, Your Honor. Alfredo Perez  
5 on behalf of the debtors. Your Honor, first, thank you very  
6 much for this setting this afternoon. I know it's not the  
7 normal time, but I really do appreciate it. Your Honor, this  
8 motion is really the culmination of work that has been being  
9 done at the company for the past two years. We really have to  
10 commend everyone at Lehman and at A&M for the all the work that  
11 they've done to get to where we are.

12 I personally have been devoting a substantial portion  
13 of my time since January of 2010 on this motion. This  
14 represents --

15 THE COURT: My condolences.

16 MR. PEREZ: Well, Your Honor, at times I felt that  
17 way. Most of the times not, but at times I felt that way.

18 Your Honor, this motion is a critical component of the  
19 plan. It deals with approximately 21,000 of the almost 60,000  
20 claims that have been filed. And it addresses the Lehman  
21 program securities. These securities were sold primarily  
22 through LBIE but they were sold by other Lehman entities,  
23 primarily issued by the foreign entities, although LBHI did  
24 issue some. And they're very bespoke. Some of them were plain  
25 vanilla, what we would call par-par notes. But a lot of them,

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1       although lesser amount in dollars, but many more in number,  
2       were really very bespoke securities.

3                 And so what the people at Lehman had to do was compare  
4       what was on the books and records to what people were holding.  
5       And it's complicated by the fact that there are no indenture  
6       trustees. These are held by individuals. Sometimes they're  
7       held in a -- through a custodian at a bank. Sometimes they're  
8       held in street name. But there is no trustee.

9                 So we went through an extensive process. We filed an  
10      original motion back in April. As a result of some further  
11      discussions, that motion was withdrawn. We now have filed a  
12      subsequent motion. And the goal of the motion, Your Honor, is  
13      to allow us to send out notices to the individual claimants as  
14      to what their claim will be for voting and distribution  
15      purposes under the plan. It's not a final determination. In  
16      connection with this motion, we have made various compromises  
17      with the people who we've been negotiating, to come up with  
18      these amounts. But in total, they probably total about thirty-  
19      seven billion dollars of debt that would otherwise be dealt  
20      with either as a guarantee or directly against LBHI.

21                 Your Honor, I did want to -- and in connection with  
22      this, Your Honor, there was objection by the Steven Holder  
23      Trust. I've spoken with them yesterday. They authorized me to  
24      represent that the objection is withdrawn. I don't know  
25      whether they're going to make an appearance today, but they

1 authorized me to make that representation.

2 We've had two statements, one by the committee, and  
3 one by one of the people that we've been primarily negotiating,  
4 represent by Brown Rudnick and Dewey Valentine (sic). And we  
5 did file, Your Honor, an amended order which addresses some of  
6 the concerns that some of the -- the committee and some of the  
7 other holders voiced, and an affidavit by Mr. Ehrmann, who has  
8 kind of led this charge. And he actually walked through how we  
9 ended up allocating the money.

10 But I do want to, just for -- to give the Court a  
11 little bit of a flavor for this, just show the one note --  
12 there were two notes that were addressed in the motion. One  
13 was a fair market value note and the other one was a par-par  
14 note. I have a copy of the fair market value note. I just  
15 want to show it to the Court because I think it will give the  
16 Court a good flavor for this. And I've tabbed page 13, which  
17 is kind of the critical page. If I may approach, Your Honor?

18 THE COURT: You may approach.

19 MR. PEREZ: Your Honor, if you'd go to page 13, that  
20 is the formula how you determine what the price of the note is.  
21 And --

22 THE COURT: I didn't take a high enough math course to  
23 be able to figure that out.

24 MR. PEREZ: And then -- but then, that's not even it.  
25 So the weight is determined by indices. And if you turn to the

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1 very last page, the indices are twelve different stocks on the  
2 Stockholm stock exchange, weighted differently with different  
3 share amounts.

4 THE COURT: Well, let me break in. Because this  
5 illustration actually calls to mind a concern I have. And I  
6 just want to address it. And I recognize this is a largely  
7 uncontested matter at the moment. But I looked through the  
8 motion and the attachments. I looked at Mr. Ehrmann's  
9 affidavit of August 5th and the calculations that are set forth  
10 on it. I've read the supporting papers filed by the creditors'  
11 committee, and I'll deem it a supporting paper filed by parties  
12 who have filed plan support agreements along with you.

13 And so there's a collective judgment that procedures  
14 along these lines are absolutely necessary at this stage of the  
15 game. And I don't debate that.

16 But given the complexity of determining what's being  
17 divided -- first of all what something is worth based upon fair  
18 value; how blocking numbers contribute to a right to  
19 participate in what's being valued; and then the determination  
20 by the debtor being delivered to all these holders of what  
21 their allowed claim amount will be deemed to be for purposes of  
22 voting and distribution; how is a holder going to be in a  
23 position to respond other than to put it away in a file and  
24 wait for a distribution some day? I don't understand how there  
25 can be a meaningful process of notice and response to the

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1 extent that there's disagreement.

2 MR. PEREZ: Well, Your Honor, let me respond to that  
3 in a couple ways. And to some extent, this is -- these are the  
4 issues that have been raised by the committee, and frankly,  
5 other holders as well. So we've been dealing with that very  
6 same issue.

7 First of all, Your Honor, these are -- two-thirds of  
8 them are plain vanilla debt instruments. So in terms of  
9 amount, two-thirds of them are plain vanilla debt instruments.  
10 So we --

11 THE COURT: So two-thirds of thirty-seven billion,  
12 more or less?

13 MR. PEREZ: Correct, Your Honor. Just so I'm clear,  
14 about twenty-four of the thirty-seven billion are plain vanilla  
15 debt instruments that are not fair market value notes. Another  
16 2.2 billion are zero coupons, again, which are not fair market  
17 value notes. There are some in there that are -- we don't  
18 really know what they are, because we don't have documents, and  
19 that's another issue that we're working through.

20 So we're talking --

21 THE COURT: Did I just hear you say we don't really  
22 know what they are?

23 MR. PEREZ: Your Honor, we have some amount on our --  
24 a small amount on our debt database that we have not been a --  
25 that we show as being owed, that we have not been able to find

1 instruments for.

2 THE COURT: Okay.

3 MR. PEREZ: Okay.

4 THE COURT: I'm not shocked to hear that.

5 MR. PEREZ: A small amount, but unfortunately -- and  
6 literally, Mr. Ehrmann's team has visited every single  
7 depository, clearing agency in Europe, some in the Pacific, to  
8 get as much of the information as possible. But there is a  
9 small number that we still have not been able to characterize.  
10 And in fact, in our discussions with some of the holders, we've  
11 actually been given information that we didn't have. And  
12 that's been kind of an iterative process.

13 So we're talking about eleven -- approximately eleven  
14 billion out of the thirty-seven that is the subject of a fair  
15 market value calculation. This one is probably a little bit  
16 more complicated than most. Most of them were a bet on either  
17 a particular stock or on a particular index that if it was  
18 above -- if the index of these stocks went up, you know, ten  
19 percent, you got a thirty percent return versus -- and vice  
20 versa. So they were a little bit more complicated.

21 Most of these instruments were sold through brokers.  
22 And in many cases, almost all of our discussions have been with  
23 substantial institutions such as banks in Italy, banks in Japan  
24 and other places that have these in their customer accounts.

25 So our primary dialog has been with institutions who have

1 clients who are invested in these accounts.

2 Back in April -- I'm sorry, in October of last year,  
3 we published for the first time, on an ISIN by ISIN basis, what  
4 we believed to be the total maximum amount on an ISIN by ISIN  
5 basis. So if an ISIN had a hundred million dollar notional, we  
6 published what it would be if a hundred -- if people who had  
7 proofs of claim totaling the entire issuance had filed proofs  
8 of claim. That has gone through many iterations. That was  
9 filed. We issued an 8-K at the time. We put it on the  
10 website.

11 In January, in connection with the amended plan that  
12 was filed, we updated those numbers, again issued a 10-K and  
13 again posted it on the website. So for the past ten months or  
14 nine months, these numbers have been available and we have had  
15 significant discussion with holders with respect to how we went  
16 about doing it, how we classified it.

17 Second, Your Honor, anybody who has called us who has  
18 requested information about why we classify them the way we  
19 did, why we treat them the way we did, et cetera, we have  
20 responded to all of those inquiries. And we have done that  
21 throughout. And there's been a team of people that have  
22 responded to inquiries all along. And we've had many  
23 inquiries. And there are people who do this a lot. In  
24 connection with the discussions with the committee, we put in  
25 the proposed form of revised order that we would continue to do

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1       that in the ordinary course of business. To the extent  
2       somebody asked us, we will investigate and respond.

3                     Third, Your Honor, what we're really talking about is  
4       procedures as to really how to even tee this up. This is  
5       really what we're talking about. And to the extent that  
6       somebody has a question or a concern, they can easily -- I  
7       mean, they can respond and say we don't understand, we don't  
8       agree. And that will start a dialog process. And we've agreed  
9       that to the extent, you know, a person who holds ten percent of  
10      an ISIN, we make a correction that we will then fix the entire  
11      ISIN, number one; number two, that we'll publish everything  
12      that we have done to, you know, all of the inquiries that we've  
13      gotten and all of the responses that we've made.

14                  Fourth, Your Honor, in connection with our recent  
15      discussions with the committee, we've agreed that on a real  
16      time basis, we will include them in all of the e-mails that we  
17      are getting or questions that we're getting about notes,  
18      whether they should be classified one way or another; and in  
19      our responses.

20                  So, Your Honor, I think the Court raises a very, very  
21      good issue. I think under the circumstances, we have done  
22      really the best we can, other than just what would have been  
23      kind of a claim objection process, which is what we really  
24      don't want to have. Because this would -- it would be -- we  
25      would never be able to get it done in any reasonable period of

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1 time. And our hope would be that a very large number of  
2 parties review these, have questions, can be answered, so that  
3 we don't have a large overhang in the claim objection process.

4 THE COURT: Well, let me ask you a question which is  
5 perhaps naive on my part, but I'm going to ask it anyway. I  
6 reviewed these papers and came to the conclusion that these  
7 were difficult to value instruments and that if one were  
8 involved in an uncontrolled process of attempting to determine  
9 the value, it would be very time-consuming, labor-intensive,  
10 and would potentially threaten the timeliness of plan  
11 confirmation.

12 But I also drew the conclusion that the debtors were  
13 engaged in a process of doing a fair job of calculating the  
14 value of these securities, but nonetheless, some judgment was  
15 being exercised in determining what the value was of each of  
16 the structured securities. To the extent that some judgment is  
17 being exercised, presumably that's an area where people could  
18 have disagreements.

19 How do third parties know about the assumptions that  
20 underlie a particular valuation methodology for a security? Or  
21 am I wrong in my basic premise?

22 MR. PEREZ: Your Honor, I don't think you're wrong in  
23 either premise. But I do think that the second comment is  
24 only -- it's correct, but it's not the whole issue. By their  
25 very nature, Your Honor, these securities have judgments built

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1       in. So if you take the price of, you know, Saab or Electrolux  
2       at 11 o'clock in the morning versus Saab or Electrolux at 12  
3       o'clock, there might be a difference there. So two people  
4       could very easily go to the room, get their information, and  
5       come back with slightly different answers that could both be  
6       correct. So that's absolutely -- it's not a situation where  
7       there is a correct answer.

8                  What we did, Your Honor, was Lehman, in the ordinary  
9       course of business, valued these on a mark-to-market basis,  
10      basically every day. So we have a mark as of the 12th. We  
11      then added in interest for the ones that were true debt,  
12      through the 15th, and in essence said, the mark that existed as  
13      of the 12th, which is the last business day before the filing,  
14      is the mark. That's where we started. And Lehman did this in  
15      the ordinary course of business, basically, every day. They  
16      would value.

17                  The problem is that --

18                  THE COURT: Well, there's another problem. Because if  
19      you get into the reliability of Lehman's marks as of any  
20      particular point in time, that has been a subject of litigation  
21      in this court, as you're well aware.

22                  MR. PEREZ: Absolutely, they were.

23                  THE COURT: So you're just accepting, for purposes of  
24      this exercise, the reliability of the marks as of September  
25      12th.

1 MR. PEREZ: As the starting point.

2 THE COURT: As the starting point.

3 MR. PEREZ: As the starting point. Okay? So we  
4 didn't go out and revalue, you know. And it's approximately --  
5 it would be 2,700 issuances that we would have to revalue if we  
6 did all the fair market values. So that's the starting point.  
7 To that we made changes to address concerns that we had and  
8 concerns that were raised to us.

9 So on our initial books and records, these were at  
10 about twenty-six -- in total, including both fair market value  
11 and par-par -- they were at about -- and I'm just talking about  
12 LBT, Your Honor, which is -- LBT is thirty out of the thirty-  
13 seven billion. So that's really the main one, the Dutch  
14 company represented by Mr. Mayer. We started out with what we  
15 thought claims should be at about twenty-six to twenty-seven  
16 billion. And after the various iterations with the parties, we  
17 ended up with claims of about 30.7 billion. So we made  
18 concessions in connection with these discussions as to changes  
19 that people suggested that we make to address them.

20 But, Your Honor, I don't want to leave the Court with  
21 the impression that we don't think these are good numbers. We  
22 do think these are good numbers. There's been a lot of people  
23 who've spent a tremendous amount of time to validate these  
24 numbers. We think these are good numbers. We think that they  
25 accurately reflect the notes.

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1                   The information -- the problem, Your Honor, was, is  
2                   that the information that was available to Lehman on an ongoing  
3                   basis is not necessarily available now. The feeds that fed  
4                   into the various valuations, we have to reproduce. Some of  
5                   them may not be available. In the cases where we obviously --  
6                   where we had the feed or had the information on an historical  
7                   basis, that was easy. But on the ones that we had to reproduce  
8                   it, revalue them, that was much more difficult. So I don't  
9                   want to give the Court the impression that this is a guess on  
10                  our part. It isn't.

11                  THE COURT: No. I wasn't suggesting that I believed  
12                  that to be the case at all. I was just trying to understand  
13                  how a claimant is supposed to respond to the notice of  
14                  determination in any way other than to ask for information as  
15                  to how you did it on a particular security, which gets you into  
16                  what could turn out to be the very time-consuming process that  
17                  this procedure is designed to avoid.

18                  MR. PEREZ: Correct, Your Honor. Absolutely correct.  
19                  But I think if we started by engaging in, in essence, what  
20                  would be a discovery process before the fact, then I think  
21                  we're at that same place.

22                  I do think, Your Honor, that we take a little bit of  
23                  comfort in that most -- a lot of these guaranties and notes  
24                  have traded. So we know that, for instance, the people that  
25                  we've been negotiating with probably have twenty percent of

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1 them at least. So I mean, obviously twenty percent of a  
2 thirty-seven million dollar number is a lot, but it's not the  
3 whole thing. But I do believe that there are concentrated  
4 amounts held in sophisticated people who have taken advantage  
5 of the fact that these have been on our website, you know, for  
6 eight, nine months, to do their valuation.

7 THE COURT: Okay. And I understand from what you  
8 said, and I realize this is a very complicated process, and  
9 we're not engaged in an evidentiary hearing, we're just having  
10 a conversation, that each one of the securities has been valued  
11 using a methodology that the debtor believes is defensible and  
12 that those who are supporting the present procedures motion  
13 believes to be defensible. And that while there may be some  
14 judgment calls that people might make differently, as to how to  
15 mark a particular security on the 12th, at least there was a  
16 consistent methodology applied. Do I understand that to be  
17 true?

18 MR. PEREZ: Correct, Your Honor. And we've gone the  
19 further point of saying if there's an error -- what we call a  
20 manifest error -- if there is an error, either in the math or  
21 in our reading of the note, then we'll correct that. And we've  
22 been correcting them. We've been -- people have brought us  
23 errors and we've been correcting them.

24 THE COURT: And somebody must be doing square roots.

25 MR. PEREZ: Your Honor, when I first started working

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1 on this, I couldn't believe that anybody who was actually not  
2 in some altered state could have actually written something  
3 like this. I mean, it's just mind boggling the complexity in  
4 some of these cases.

5 THE COURT: Is there an algorithm of some sort that is  
6 applied to the valuation of various classes of securities to  
7 make this easy, or is each one of the valuations, to some  
8 extent, the function of a unique calculation?

9 MR. PEREZ: Your Honor, for the most part, the fair  
10 market value notes are bespoke, so they are not the same.  
11 They're variations on a theme, like the -- you know, an index,  
12 or a lot of people wanted to buy stocks in India and you  
13 couldn't do it, so you would buy a structured note in order to  
14 buy -- in order to hedge the Indian market. And some of these  
15 notes are long versus some of them being short. So some people  
16 would bet against the Indian market using one of these notes,  
17 as opposed to going long on the Indian stock market using these  
18 notes.

19 THE COURT: I think I've asked enough.

20 MR. PEREZ: Okay. Thank you, Your Honor.

21 MR. FLECK: Good afternoon, Your Honor. Evan Fleck of  
22 Milbank Tweed on behalf of the official committee. Your Honor  
23 let me just start out by saying that the committee does not  
24 object to the relief requested from the motion. And so we  
25 probably could stop there. But as Your Honor's questions have

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1 suggested, this has been one of if not the most challenging  
2 issues that the committee has faced during the course of these  
3 cases.

4 We're pleased to have gotten to a point where we're  
5 not objecting to the motion. But it has been quite a long ride  
6 that we've been on. And I wanted to spend the time, if the  
7 Court will indulge this presentation, explaining how we got to  
8 this point and why we are comfortable with the relief  
9 requested.

10 And there are a couple of data points that drove the  
11 committee's inquiry. And the first was that -- and they're  
12 remarkably consistent with the questions or the answers to the  
13 questions that Your Honor was getting to during Mr. Perez's  
14 presentation. And I think the committee will be pleased that  
15 its concerns were consistent with the Court's concerns, and  
16 what had driven the committee throughout this process to keep  
17 pushing its advisors was something that the Court would also be  
18 interested in.

19 The first was that, again, this is an extremely  
20 difficult problem. And if there was an easy solution, one  
21 where we had all the documents and they were before us, we had  
22 all the models, we wouldn't have spent all the time and  
23 resources on this. It would be much more straightforward like  
24 you might have seen in other cases. But as Mr. Perez said, we  
25 don't. And so it required people to actually think creatively

1 and outside the box, as we've done with the debtors,  
2 successfully, on a number of times in these cases and hope to  
3 continue to do.

4           But the first data point was that we had to be  
5 comfortable with the valuation methodology. If we couldn't get  
6 comfortable that this was an acceptable way of valuing -- and  
7 I'm speaking specifically to the fair market value notes --  
8 then that really was the end of the inquiry. And the second  
9 is, if the committee could be comfortable with the methodology,  
10 was there an appropriate and sufficiently robust process in  
11 place for creditors to be able to engage with the debtors,  
12 engage, if they chose to do so, with other fiduciaries of the  
13 estate, possibly the committee, and then ultimately with the  
14 Court, if they wanted to have an opportunity to dispute a  
15 valuation of their notes.

16           And again, I am pleased and the committee's pleased to  
17 be in a position today that in response to both of those  
18 questions I can say yes, we're comfortable that the valuation  
19 methodology is acceptable under the circumstances that we're  
20 dealing with and the circumstances that the debtors were  
21 dealing with in the first instance, to try to develop a  
22 valuation methodology suitable for these notes. And on the  
23 second question, it's an affirmative answer as well, because we  
24 believe, particularly with the enhancements, that the process  
25 is appropriate and that the questions that Your Honor asked

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1 about what is a noteholder to do when they get a number, that  
2 there actually is a process in place; that they're not just  
3 either forced to say I don't like the number, this can't be  
4 right, I object, because that doesn't work; or feel compelled  
5 to say I accept it because I don't know any better.

6 Neither of those options was acceptable to the  
7 committee, that a claimant would be forced into the situation.  
8 And we think that because a claimant in the first instance has  
9 some information and they've already been provided with the  
10 publications that have been referred to in the pleadings and  
11 on the record. And so some people are very sophisticated in  
12 this process, and knew what to do with that information. They  
13 asked certain questions. I think some of those parties are  
14 represented by counsel today that filed a statement in support  
15 of the motion. And that was important to the committee to know  
16 that there were sophisticated parties that hold these notes  
17 that support these procedures.

18 But it didn't get us there ultimately, because that's  
19 one class of creditors that fall within the committee's  
20 constituency. But there are other classes that are less  
21 sophisticated and probably need a little bit more of a robust  
22 process to get them the due process they need.

23 And so the first step is, for those creditors, after  
24 they've seen some numbers listed on a publication, is for them  
25 to have the ability to reach out in an informal way to the

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1 debtors and ask questions. And as Mr. Perez reported to the  
2 Court that they have received questions; we have been looped in  
3 on that. But they will -- the debtors will continue to respond  
4 to those inquiries.

5 We didn't want to set up a process and we didn't want  
6 to try to get the debtors to agree to a process where we were  
7 setting up mini discovery before a creditor had even raised his  
8 or her hand and said I may have a problem here. Because that  
9 would be unworkable, and in our view, would have defeated the  
10 objectives of having a streamlined efficient process. But we  
11 felt, with this informal interim step before a response needs  
12 to be filed, that if someone could raise their hand or send in  
13 an e-mail and present a question at that point, and get a  
14 response that's crafted, of course, in good faith and with an  
15 effort to try to provide information that's reasonably within  
16 the debtors' possession, then that helped us to get comfortable  
17 that people aren't just going to be stuck with a number and  
18 with the untenable choice of just saying reflexively, I object,  
19 or saying I accept it because I have no other recourse than  
20 engaging in a difficult legal process.

21 And we also felt that particularly because, as an  
22 estate fiduciary and as a party that has, for better or worse,  
23 become quite knowledgeable about these notes as well, that we,  
24 as the committee, and FTI as the financial advisor to the  
25 committee, could also help in that process. And that's why we

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1       felt it was important that the committee know about inquiries  
2       and be -- on a real time basis be made aware of the responses  
3       that are being given.

4                 I want to be clear about something -- hopefully I've  
5       been clear about everything I've said thus far. But I want to  
6       be perfectly clear that we recognize that there needs --  
7       there's a balance here; that claimants are asserting claims  
8       against the estate for recoveries, and our duties flow to all  
9       the unsecured creditors to maximize recoveries. And the duty  
10      of the committee, as we understand it, is not to maximize every  
11      creditor's claim and every creditor's claim vis-a-vis other  
12      creditors. So we're not looking to create a process, and we  
13      don't think we helped to create a process, where individual  
14      creditors are getting a leg up on other creditors and getting  
15      help to craft a compelling claim or an argument that the  
16      debtors mis-valued a particular note.

17               We just want to make sure that creditors, to the  
18      extent they are paying attention, and we think they should be,  
19      will have an opportunity, before they fully engage in the  
20      response process -- and I'm using that defined term from the  
21      debtors' procedures -- that they can ask a question and get an  
22      answer that will help them along the way to understanding what  
23      we all have come to realize are extremely complicated  
24      securities; that we understand they purchased, so it's not as  
25      though these were thrust upon them. But we also are mindful of

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1 the fact that they may need a little bit extra help before we  
2 get to the response phase.

3 And then the next steps in the process also were very  
4 important to the committee. So it's not a formal legal  
5 pleading before this Court. Someone can submit a response  
6 that's much less formal. And we think it's also important that  
7 the committee receive those. The debtors have agreed that we  
8 will be part of that process so that we can also be monitoring  
9 what's happening here.

10 And I think because of the fact that these are -- this  
11 is such an unusual situation with such unusual securities,  
12 perhaps unique is the right word, what we tried to help the  
13 debtors to craft was a process that would have some -- would be  
14 somewhat fluid. So if we need to be flexible about the type of  
15 information and communication with creditors, we expect to  
16 reengage with the debtors and have that dialog, all with the  
17 same four goals in mind that I set out at the beginning.

18 One, we're very satisfied that we're comfortable that  
19 this is a reasonable valuation methodology under the  
20 circumstances; and two, that the process be appropriate under  
21 the facts and circumstance here.

22 We allow for the fact that, and expect that some  
23 creditors will ultimately get to the point, notwithstanding the  
24 information they receive, they will file responses. They will  
25 take issue with their valuation, and they will challenge the

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1 assumptions. And that's fine. That's the process that --  
2 that's kind of the ordinary process that you would expect to  
3 happen. And that's a sign, to the committee at least, that  
4 someone has taken the information that's been provided to them,  
5 availed themselves of the process that we've collectively  
6 crafted, and then at that point, sought the intervention of  
7 perhaps an ADR process or the Court, if that's necessary.

8 So -- and lastly, I just wanted to comment on the  
9 manifest error point, because we raised it in our statement.  
10 We have, as part of our process of working with the debtors,  
11 talked about manifest errors, and we have reached an  
12 understanding that those manifest errors -- first of all, the  
13 debtors have agreed to search the population of structured  
14 securities to correct manifest errors, and we will continue the  
15 cooperative process that the committee and the debtors have  
16 had, particularly over the most recent period, to correct those  
17 manifest errors, hopefully in time for the publication on the  
18 15th. But if not, they will be corrected. And that further  
19 assures a process with which the committee can be comfortable.

20 One process point we think is just an issue for good  
21 order. The -- as Mr. Perez indicated and as I repeated, in the  
22 procedures, the debtors have agreed to provide the committee  
23 with copies of inquiries -- inbound inquiries and then the  
24 debtors' responses to those inquiries, before the response  
25 phase. They have agreed to do that. We've represented on the

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1 record the committee has requested, as a matter of consistency  
2 for the way we've interacted with the debtors in the past, and  
3 also for creditors who look at the order, that that be included  
4 in the proposed order that the Court will hopefully enter  
5 today.

6 And with that, I would conclude my remarks. I'm happy  
7 to take any questions if there are any.

8 THE COURT: I don't have any questions for you.

9 MR. FLECK: Thank you.

10 MR. LEVINE: Good afternoon, Your Honor. Steven  
11 Levine, Brown Rudnick. I don't want to take up too much of  
12 your time, but I wanted to try to alleviate some of your  
13 concerns.

14 We represent roughly two and a half billion dollars'  
15 worth of holders of what has been referred to here as the  
16 bespoke notes. These are very sophisticated institutions.  
17 They're very sophisticated people who've had great fun, at my  
18 expense, whenever I've tried to work through one of those  
19 formulas and found my high school algebra to be wanting.

20 Amongst them, they hold a pretty good cross section of  
21 the notes. They're not concentrated in any particular notes.  
22 And each of them hold different ones. As we stated in our  
23 pleading, the clients uniformly support the adoption of this  
24 procedure, primarily because any other procedure anyone can  
25 think about would just turn in to morass. And for the reason

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1 that the Court mentioned, Messrs. Perez and Fleck mentioned,  
2 these valuation principles were done pre-petition without  
3 anybody having a particular axe to grind in terms of trying to  
4 maximize or minimize a claim. There's some rough consistency.  
5 And again, in working through them very carefully amongst  
6 themselves and in dialog with the debtors and the committee,  
7 they feel that these numbers are roughly fair.

8 It's not to say that in certain circumstances, if  
9 somebody were trying to game the system and act like people  
10 typically act in a claims objection procedure, and come up with  
11 the maximum possible claim, for certain of these claims, people  
12 could come up with very colorable theories as to why they would  
13 be higher. But on a systematic approach, in terms of valuing  
14 these notes in time to get the plan done and to allow for  
15 distribution, again, on a practical basis, we can see of no  
16 better alternative.

17 You know, we continue to discuss specific notes with  
18 the debtor where we think there's been manifest error. As  
19 recently as a couple of weeks ago, we came across one note  
20 where there was a statement of final terms that my client had  
21 that the debtor didn't have, and we're in a dialog about that.  
22 There's some other more esoteric discussions. But it's all  
23 being done in a very constructive, good-faith basis. And we're  
24 optimistic that those types of issues can get resolved.

25 In terms of how important we think this is, as we

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1 stated in our papers, we've made sure that people who signed  
2 plan support agreements would get their claims valued in  
3 accordance with this methodology. And while they're not before  
4 the Court, plan support agreements that my clients have signed,  
5 have an out if the claims are valued through some other  
6 methodology.

7 Again, it's not that these are perfect or do  
8 maximization of our claims, but we can't think of any other  
9 alternative. And I think while there's not a perfect  
10 correlation with every note, the Court should take some comfort  
11 that some very sophisticated people have looked through a wide  
12 cross section of notes and determined this procedure be roughly  
13 fair. Thank you.

14 THE COURT: All right. Thank you.

15 MS. WIENER: Good afternoon, Your Honor. Monika  
16 Wiener of Dewey & LeBoeuf on behalf of certain other holders.  
17 We were the other party that joined in the statement that Mr.  
18 Levine's clients filed as well.

19 The only thing I want to -- I don't want to belabor  
20 anything that Your Honor has already heard here. But the only  
21 point I did want to make is that our clients represent sort of  
22 a swing towards the more plain vanilla par-par side of things  
23 in terms of the notes that they hold. Obviously, there's a  
24 very wide variety, both from Mr. Levine's clients and my  
25 clients, although the balance for our clients tends to shift

1 more in the par-par direction.

2           And I think it is telling that both our clients, who  
3 are equally sophisticated, and Mr. Levine's clients, who hold  
4 sort of different balances in terms of the mixes of notes that  
5 they hold, are supportive of these procedures. And you know,  
6 for any argument that you might make that the value should be  
7 higher, there would probably be arguments on the other side  
8 that the value should be lower. So -- in terms of the FMB  
9 notes.

10           So I think it's telling that our two groups of clients  
11 are in agreement on this, and indeed, others as well, I think,  
12 who may not be represented here today. So I think that's  
13 telling and should give the Court some comfort as well. Thank  
14 you, Your Honor.

15           THE COURT: Thank you.

16           MR. KLEIN: If it please the Court, Darren Klein of  
17 Davis Polk & Wardwell on behalf of Lehman Brothers  
18 International (Europe). We do not object to the relief sought  
19 here. In fact, we worked with the debtors beforehand to get  
20 the one point of clarification that we wanted to know about.

21           LBIE holds, as custodian, many of these program  
22 securities, both on behalf of third parties and affiliates.  
23 And we weren't sure if the debtors were intending to impose  
24 these procedures on both third parties and affiliates --  
25 securities that are beneficially owned by affiliates. And

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1 LBIE's proof of claim 62783 is an omnibus proof of claim that  
2 includes in it both affiliate LPS and third-parties. And Mr.  
3 Perez -- thank you for the courtesy -- has clarified in the  
4 order that these procedures are not intended to apply to  
5 affiliates. And we intend to work with Mr. Perez, the debtors  
6 and the committee over the coming days to clarify what exactly  
7 in that proof of claim is held by third parties and to make  
8 sure that they get the appropriate information, and what in  
9 that proof of claim is held by affiliates. Thank you, Your  
10 Honor.

11 THE COURT: Mr. Perez, you want to comment in  
12 reference to that last statement by LBIE's counsel?

13 MR. PEREZ: Yes, Your Honor. We are having bilateral  
14 discussions with each of our affiliates. One of the issues on  
15 the table is any notes that they may have. And that's just  
16 part of the bilateral negotiations. I mean, in terms of  
17 valuing them, I think we intend to value them the same way.  
18 But they're not part of this process.

19 So, in other words, all of our issues with each of the  
20 individual affiliates will be handled in a bilateral  
21 negotiation like we did with Bankhaus, like we've done with  
22 LBJ. And but to the extent that they've filed a proof of claim  
23 that has both customer securities and affiliate securities, the  
24 customer securities will be the subject of this motion, whereas  
25 the affiliate -- the ones that are held by affiliates are not.

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1 It's really more of a mechanical issue as to how we do it.

2 THE COURT: Okay.

3 MR. PEREZ: Your Honor, with that, unless the Court  
4 has any questions, we'd request that the Court enter the order.

5 THE COURT: I don't have any other questions. I've  
6 reviewed the motion and the various papers filed in response to  
7 it, and recognize that the securities that are the subject of  
8 the motion are somewhat unique and difficult to value, and that  
9 the holders of claims in reference to these securities need a  
10 starting point for the process of participating in the case.  
11 And based upon what has been represented, this is as good a  
12 place to start as any.

13 I am comforted by the fact that counsel for the  
14 creditors' committee has been actively involved along with its  
15 financial advisor, FTI, in reviewing the procedures that are  
16 the subject of the motion, as well as by the statements made by  
17 counsel for the group represented by Brown Rudnick and Dewey &  
18 LeBoeuf.

19 The issue of how an individual holder who is  
20 unsophisticated will deal with this, is still a point that may  
21 be troublesome in practice, because it seems to me that to the  
22 extent these securities are held by individuals who are not  
23 sophisticated, and who acquired these securities through retail  
24 brokers in Europe, and who will receive a document that will be  
25 difficult to understand, the likely response will be either

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1       this is too complicated for me, I'm just going to put it away,  
2       or this is so complicated I don't understand it; I'm going to  
3       ask some questions about it.

4                   So it seems to me that there is at least a risk  
5       associated with these procedures, that this will create a flood  
6       of inquiries from third parties saying I don't understand this,  
7       tell me how this was valued. And so, my concern is that while  
8       I'm prepared to support this and recognize that the purpose of  
9       these procedures is to minimize burdens on the estate that  
10      there may be an unintended consequence of actually creating  
11      some burdens for the estate. But that may simply be  
12      unavoidable. I'm prepared to enter the order as amended.

13                  MR. PEREZ: Thank you, Your Honor. Your Honor, on a  
14       totally different note, last week the Ninth Circuit ruled in  
15       the SunCal matter.

16                  THE COURT: I've read the opinion.

17                  MR. PEREZ: Okay. Well, I just had extra copies for  
18       the Court.

19                  THE COURT: I learned about it the day that it was  
20       entered, and read it with interest, in part because it's the  
21       first time that I'm aware that a court of appeals has actually  
22       cited statements made by me as authority for its decision,  
23       which I found both humbling and startling.

24                  MR. PEREZ: I especially liked the footnote about  
25       Shinsei.

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1 THE COURT: All right. I did see it.

2 MR. PEREZ: Thank you, Your Honor.

3 THE COURT: And sure, you may hand that up. And we're  
4 adjourned.

5 MR. PEREZ: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (Whereupon these proceedings were concluded at 2:49 p.m.)

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2                   I N D E X

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4                   R U L I N G S

5                   DESCRIPTION	PAGE	LINE
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6                   Motion for approval of procedures for	33	12
7                   determining the allowed amount of claims		
8                   filed based on structured securities issued		
9                   or guaranteed by Lehman Brothers Holdings,		
10                  approved as amended		

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2 C E R T I F I C A T I O N

3

4 I, Lisa Bar-Leib, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

6

Lisa Bar-Leib

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